



**IN THE MATTER OF:**

**Complainant,**

**and**

**Respondent.**

**Charge No.: 2003CF2260**

**EEOC No.: N/A**

**ALS No.: 12277**

## **RECOMMENDED ORDER AND DECISION**

On November 7, 2003, Complainant, Sam J. Maggio, filed a complaint on his own behalf against Respondent, Minolta Business Solutions. That complaint alleged that Respondent discriminated against Complainant on the basis of a physical handicap when it harassed him, gave him a negative performance evaluation, denied him an annual salary increase, and failed to accommodate him.

This matter now comes on to be heard on Respondent's Motion to Dismiss Complaint of Civil Rights Violation. Although both Complainant and the Illinois Department of Human Rights were given leave to file responses to Respondent's motion, no such response has been filed. The time for filing such a response has passed. The matter is ready for decision.

## FINDINGS OF FACT

The following facts were derived from the record file in this matter.

1. Complainant filed his initial charge of discrimination with the Illinois Department of Human Rights (hereinafter “the Department”) on or about February 17, 2003.
2. Complainant filed his complaint before the Human Rights Commission on November 7, 2003.
3. There is no indication in the record that the Department has taken any action

with regard to Complainant's charge of discrimination.

#### CONCLUSIONS OF LAW

1. Once a charge of discrimination is filed, the Department has 365 days in which to investigate the charge and either to issue and file a complaint or to dismiss the charge and order that no complaint be filed.

2. Complainant has no authority to file his own complaint before the Human Rights Commission until after the expiration of the 365-day investigation period.

3. The complaint in this matter is untimely and the Human Rights Commission has no authority to consider it.

4. The complaint should be dismissed without prejudice and remanded to the Department for further investigation.

#### DISCUSSION

Complainant, Sam J. Maggio, filed his initial charge of discrimination with the Department on or about February 17, 2003. He then filed his complaint before the Human Rights Commission on November 7, 2003.

Under section 7A-102(G)(1) of the Illinois Human Rights Act, once a charge of discrimination is filed, the Department has 365 days in which to investigate the charge and either to issue and file a complaint or to dismiss the charge and order that no complaint be filed. Within a 30-day window immediately following the expiration of that period (or any extension of that time agreed to in writing by all parties), if the Department has not acted on the charge, a complainant may file his or her own complaint before the Commission. 775 ILCS 7A-102(G)(2). In other words, unless the Department has taken action before that time, a complainant may file his or her own complaint during the 30-day period that begins on the 366<sup>th</sup> day after his or her charge of discrimination was filed.

In this case, it is clear that Complainant has filed his complaint prematurely. His 30-day

filing period has not yet begun. When a complaint is filed before the opening of the appropriate time window, the Human Rights Commission has no authority to consider that complaint. The appropriate remedy is to dismiss the complaint without prejudice to allow the Department to continue its investigation. ***Gosnell and Long John Silver's***, 49 Ill. HRC Rep. 76 (1989). Such a dismissal is appropriate in this case.

#### RECOMMENDATION

Based upon the foregoing, it is clear that the complaint in this matter is premature and that the Human Rights Commission has no authority to consider it. Accordingly, it is recommended that the complaint be dismissed without prejudice to allow the Department of Human Rights to conduct its investigation of Complainant's charge of discrimination.

#### HUMAN RIGHTS COMMISSION

BY: \_\_\_\_\_  
MICHAEL J. EVANS  
ADMINISTRATIVE LAW JUDGE  
ADMINISTRATIVE LAW SECTION

ENTERED: January 27, 2004